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Response to the Restriction Requirement

The Office has required the Applicant to elect one of the following inventions for examination:

- Group I, claims 1-16, drawn to a cap for removable attachment to a barrel; and
Group II, claim 17 drawn to a storage pad.

The Office has also required the Applicant to elect one of the following species from each lettered group to which the claims shall be restricted if no generic claim is finally held allowable:

- a. Species A1 directed to Figs. 1-5; Species A2 directed to Fig. 6; and
- b. Species B1 directed to a cap comprising camouflage coloring; Species B2 directed to a cap that is luminescent.

Applicant hereby elects, with traverse, the invention of Group I, claims 1-16, for examination purposes.

Applicant also elects Group a, Species A1, directed to Figs. 1-5, with traverse.

Applicant also elects Group b, Species B1, directed to a cap comprising camouflage coloring, with traverse.

It is Applicant's belief that claims 1-7, 9-13, and 16 are readable on Species A1 directed to Figs. 1-5. Furthermore, it is Applicant's belief that claim 15, as amended on October 24, 2004, is readable on Species B1. However, it is believed that claim 15, as presently amended, is readable on both Species B1 and Species B2.

All of the elections above are made with traverse for the following reasons:

The present application was filed under 35 U.S.C. § 371 as a U.S. National Phase application of PCT/CA03/00687 and, as such, is subject to the unity requirements set out in

PCT Rules 13.1-13.4 and 37 C.F.R. §1.475, as well as the PCT Administrative Instructions and Annex B. It is to be further noted that the scope of the claims presently before the U.S. Patent and Trademark Office is identical to that of the claims of the International application.

In the present application, the International Preliminary Examination Authority has already reviewed unity of invention during International preliminary examination. No finding of lack of unity was made during the International stage. It is therefore apparent that the International Preliminary Examination Authority has already determined that the criteria of PCT Rule 13 are satisfied in this application.

Furthermore, according to Article 27, paragraph 1, of the PCT, it is not permissible for a national office to require compliance with requirements that are different from or in addition to the implementing rules of the PCT and the Regulations.

In view of the foregoing, it was clearly improper for the Examiner to raise an objection of lack of unity of invention during the US national phase of the present U.S. National Phase application.

Even assuming, *arguendo*, that it is proper for an objection of lack of unity to be raised in this U.S. national phase application, it is Applicant's belief that the Examiner has improperly applied the "unity of invention" criterion of PCT Rule 13.

Under PCT Rule 13, the Applicant is entitled to examination of a single inventive concept (unity of invention) as determined by a technical relationship among the groups that involves at least one common or corresponding special technical feature.

Rule 13.1 stipulates that an International application shall relate to an invention or to a group of inventions so linked as to form a single general inventive concept.

Rule 13.2 explains that a single general inventive concept exists between the inventions of the claims when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features, said "special technical features" meaning those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

In the present application, the special technical feature that is common to all of the claims is the requirement for a removably attachable cap (1), which feature defines a contribution that each of the claims, considered as a whole, makes over the prior art. The color features of the cap are preferred embodiments of the invention.

Since the Examiner provides no credible evidence that this special technical feature does not make a contribution over the prior art, a holding of lack of unity of invention of the presently amended claims is inconsistent with PCT Rule 13 and 37 C.F.R. §1.475.

The Applicant therefore respectfully requests that the restriction requirement issued by the Examiner be favorably reconsidered and withdrawn.

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Remarks

Claim 15 has been amended to recite that cap (1) is camouflaged or luminescent.

Claim 16 has been canceled.

It is believed that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,



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